

STATE OF NEW JERSEY
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW & PUBLIC SAFETY
DCR DOCKET NO. PR02EB-66659

Roxanne Meneghin,)	
)	<u>Administrative Action</u>
Complainants,)	
)	FINDING OF
v.)	PROBABLE CAUSE
)	
Disabled American Veterans,)	
)	
Respondent.)	

On September 18, 2017, Roxanne Meneghin (Complainant) filed a complaint with the New Jersey Division on Civil Rights (DCR) alleging that Disabled American Veterans (Respondent), a place of public accommodation, denied her access to its women's restroom because of her gender identity and gender expression, in violation of the New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -49. The DCR investigation found as follows.

Summary of Investigation

Respondent is a non-profit organization created by the United States Congress that provides quality of life services and support to disabled American military veterans and their families. In addition to its 63 local offices throughout the United States, it also operates a bar at its Chapter 2 location in Clifton, New Jersey ("the bar"). During the relevant period, the bar was managed by Bar Manager Paul Collins.

Complainant, a transgender female, joined Respondent's organization in or around 2014. Thereafter, she patronized the bar on a regular basis. At the time Complainant became a member, she had yet to begin her transition, and was known to Respondent as "Russel." In or around mid- 2017, Complainant began presenting as a woman and regularly utilized the women's restroom. However, Complainant alleged that on or about Saturday, July 29, 2017, bartender [REDACTED] advised her that members had been complaining with respect to her use of the women's restroom, and that per Collins, she must use the men's restroom instead. Complainant subsequently left the bar.

Respondent acknowledged that it instructed Complainant not to use the women's restroom, but stated that it did so only because it had received numerous complaints from female customers. It also stated that Complainant returned to the bar on multiple occasions thereafter, and used the women's restroom without issue.

DCR interviewed Collins. He stated that he was not at the bar on the evening in question, but that he received a phone call from [REDACTED], who told him that female customers were complaining about Complainant's use of the women's restroom. [REDACTED] asked Collins how he

should handle the situation, and Collins advised [REDACTED] to inform Complainant that she must use the men's restroom.

Complainant told DCR that she returned to the bar on roughly three occasions thereafter and was able to use the women's restroom without interference from Respondent. However, she stated that female customers approached her and told her that she should refrain from using the women's restroom while there are women in it.

Collins stated that Complainant was able to use the women's restroom on those three subsequent visits because he was not present at the bar and the bartender working on those dates was unaware that Complainant had been asked not to use the women's restroom. He stated that Complainant "used [the women's restroom] even though she had been previously told not to." He stated that Complainant has not been back to the bar since. Complainant confirmed same.

Analysis

At the conclusion of an investigation, DCR is required to determine whether "probable cause exists to credit the allegations of the verified complaint." N.J.A.C. 13:4-10.2. "Probable cause" for purposes of this analysis means a "reasonable ground of suspicion supported by facts and circumstances strong enough in themselves to warrant a cautious person in the belief" that the statute has been violated. *Ibid.* If DCR determines that probable cause exists, then the complaint will proceed to a hearing on the merits. N.J.A.C. 13:4-11.1(b).

A finding of probable cause is not an adjudication on the merits. Instead, it is merely an initial "culling-out process" in which the Director makes a threshold determination of "whether the matter should be brought to a halt or proceed to the next step on the road to an adjudication on the merits." *Frank v. Ivy Club*, 228 N.J. Super. 40, 56 (App. Div. 1988), rev'd on other grounds, 120 N.J. 73 (1990), cert. den., 498 U.S. 1073. Thus, the "quantum of evidence required to establish probable cause is less than that required by a complainant in order to prevail on the merits." *Ibid.*

The LAD makes it unlawful for a place of public accommodation, such as a bar, to "directly or indirectly refuse, withhold from, or deny to any person any of the accommodations, advantages, facilities or privileges thereof" based on gender identity or expression. N.J.S.A. 10:5-12(f). The LAD also provides that the law's prohibitions are not to "be construed to include or apply to any institution, bona fide club, or place of public accommodation, which is in its nature distinctly private." N.J.S.A. 10:5-5(1). The statutory exemption for distinctly private organizations is designed to protect personal associational preferences of club members. *Clover Hill Swimming Club v. Goldsboro*, 47 N.J. 25, 34-35 (1966).

For purposes of this disposition, the Director finds that Respondent is a public accommodation covered by the LAD and not a "distinctly private" club. While an individual must be a member to patronize Respondent's bar, it appears the only criteria for becoming a member is to be a veteran, or family member of a veteran, who was wounded or suffered a disability due to military service. It does not appear to have the type of selective membership process where the membership itself determines who may be part of the organization. See, e.g., *Kiwanis International v. Ridgewood Kiwanis Club*, 866 F.2d 468, 477 (3d Cir. 1986) (finding organization

to be private club when it had selective membership practices requiring new members to be sponsored by an existing member and to be voted in by membership). Accordingly, Respondent, as a public accommodation, may not discriminate on the basis of gender identity or expression. N.J.S.A. 10:5-12(f).

By Respondent's own admission, Bar Manager Collins instructed one of Respondent's employees – [REDACTED] – to advise Complainant, who identifies as female, that she could no longer use the women's restroom, and instead, was required to use the men's restroom. Respondent's argument that Complainant used the women's restroom without issue in three subsequent visits to the bar is of no moment. Indeed, in a DCR interview, Collins implied that if he had been present at the bar during those three subsequent visits, he would not have permitted Complainant to use the women's restroom. Specifically, he expressed his displeasure that Complainant did not obey his request not to use the women's restroom, stating that Complainant "used [the women's restroom] even though she had been previously told not to." So too with Respondent's assertion that it only prohibited Complainant from using the women's restroom because it received complaints from other female patrons. Under the LAD, individuals are permitted to use restrooms and locker rooms corresponding to their gender identity or expression. N.J.S.A. 10:5-12(f)(1) (where a public accommodation provides accommodations segregated by gender, "individuals shall be admitted based on their gender identity or expression.") Refusal to allow an individual to use the restroom or locker room consistent with his or her gender identity or expression, even as a response to customer complaints, is unlawful under the LAD.

Even if Respondent were deemed to be a private club, it would not escape liability for the actions alleged here. N.J.S.A. 10:5-12(f)(2) provides that notwithstanding the definition of public accommodation, it is unlawful for any private club to discriminate against any individual accepted as a member in the furnishing of the accommodations of the club based on gender identity or expression. Respondent accepted Complainant as a club member in 2014, and she was still a member at the time of the events in this matter. Thus, even if a private club, Respondent was required to provide Complainant with nondiscriminatory access to the club's facilities, including use of a restroom consistent with her gender identity or expression.

Therefore, based on the investigative findings, the Director is satisfied at this preliminary stage of the process that there is **PROBABLE CAUSE** to support Complainant's allegations of discrimination and finds that the matter should "proceed to the next step on the road to an adjudication on the merits." Frank, supra, 228 N.J. Super. at 56.



Rachel Wainer Apter, Director
NJ Division on Civil Rights

Date: October 29, 2019